

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 1117 OF 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**BHURIBEN D/O LALLUBHAI BHANABHAI,
THROUGH POWER OF ATTORNEY HOLDER - Petitioner(s)**

Versus**HAJI YUSUF HAJI ISMAIL JASAT & ORS. - Respondent(s)**

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Appearance :

Shri Jigar Raval for Shri M.C. Bhatt for Petitioner(s).

None for Respondent No.1 though the name of Shri Kharadi is shown in
the Daily Board.

Shri M.R. Mengdey, AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 11/05/2007****ORAL JUDGMENT**

The predecessor in title of the petitioner was allotted 9

Gunthas and 11 Yards land under the provisions of the Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953. Some land out of the allotted land was acquired for widening of the road, therefore, the petitioner was left with 5 Gunthas of land, equivalent to 605 sq. yards. It appears that the petitioner executed a general power of attorney in relation to this land on 3rd August, 1987 in favour of one Naim Kaiyum Sheikh and also handed over the possession of the property in favour of the said attorney. After learning about the transfer of possession, the learned District Collector initiated the proceedings on the ground that the action of the present petitioner was contrary to the conditions under which the land was allotted to the petitioner.

2. The petitioner appeared before the District Collector and submitted that the area of 5 Gunthas of land was so small that it became difficult for her to carry on the agricultural operations and as she was to earn some livelihood by performing manual labour, she had executed the said power of attorney.

3. After hearing the parties, the learned District Collector rejected the explanation and directed forfeiture of the land. The order was challenged before the State Government and the revision came to be dismissed by the Additional Principal Secretary (Appeals) by passing the order in Revision No.SRD/LND/SN/8/96 on 23rd November, 1998. The petitioner is now before this Court.

4. Shri Raval, learned Counsel for the petitioner, submits that execution of the power of attorney and handing over of the land to the attorney would not amount to transfer and in any case, the authorities were required to give an opportunity to the petitioner to cancel the power of attorney and remove the hutment, which was unauthorisedly

raised by the present petitioner.

5. Shri Mengdey, learned Assistant Government Pleader for the respondent, has opposed the application submitting, *inter alia*, that a perusal of the power of attorney would show that except execution of the sale deed in favour of the said attorney, all powers have been given to him. He submits that if the petitioner wanted the land to be utilised for any other purpose, then, appropriate permission ought to have been obtained and in any case, if the land was not fit for agricultural operations, then, instead of authorising the attorney to seek its conversion, the petitioner herself could make the application for non-agricultural use.

6. I have gone through the general power of attorney. A perusal and fair understanding of the recitals in the general power of attorney would make it clear that every power has been transferred in favour of the attorney. He has been authorised to engage and employ the labour, pay taxes, issue necessary receipts and do almost everything for and on behalf of the petitioner. The power of attorney also authorises the attorney to make an application for conversion of the use and for conversion of the land from new tenure to old tenure. It would appear that the parcel of land, in fact, has been totally transferred in favour of the attorney and instead of executing the sale deed, the petitioner, to defeat the provisions of law, had executed the general power of attorney. On that point, I am unable to hold that the action of the petitioner was *bona fide* and there was no transfer.

7. So far as the recall of the power of attorney and removal of the hut raised unauthorisedly are concerned, in view of the above findings, the petitioner would not be allowed to say before this Court

that the authority should have given her time to cancel the power of attorney, remove the unauthorised construction and regularise the lapses committed.

8. I do not find any reason to interfere in the matter. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**